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# Supreme Court of the United States

OCTOBER TERM, 1935.

No. 114.

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands,

*Petitioner,*

—against—

THE NATIONAL CITY BANK OF NEW YORK,

*Respondent.*

## MEMORANDUM FOR RESPONDENT, THE NATIONAL CITY BANK OF NEW YORK, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

HARRY W. FORBES,
*Attorney for Respondent.*

CARL A. MEAD,
*Of Counsel.*

THE COURT PRESS, N. Y. C.

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THE NATIONAL CITY BANK OF NEW YORK,

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## *MEMORANDUM FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.*

### *Opinions Below.*

The opinion of the Insular Court of First Instance of Manila has not been reported (see Record, pp. 132-137).

The opinions of the Supreme Court of the Philippine Islands have not been reported (see Record, pp. 142-161).

### *Question Presented.*

The question is whether the Government of the Philippine Islands, a dependency of the United States, having levied and collected a tax on the net income of a branch of The National City Bank of New York, conducting business in the Philippine

Islands, may, in addition, levy and collect taxes upon the deposits and the capital of the branch.

This Court has very recently decided that *Puerto Rico* has no power to impose similar capital taxes, in addition to income taxes, on a local branch of this same bank.

*Domenech* v. *National City Bank*, 294 U. S. 199.

## Statutes.

Section 5219 of the Revised Statutes, as amended by the Acts of March 4, 1923, Chapter 267, 42 Stat. 1499, and March 25, 1926, Ch. 88, 44 Stat. 223 (12 U.S.C.A. Sec. 548). See appendix, Exhibit A.

Sections 1 and 5 of the Act of August 29, 1916, Ch. 416, 39 Stat. 545, entitled "An Act to declare the purposes of the people of the United States as to the future political status of the people of the Philippine Islands and to provide a more autonomous government for those Islands" (48 U.S.C.A. Secs. 1001, 1003). See appendix, Exhibit B.

Section 25 of the Federal Reserve Act, as amended, 12 U.S.C.A. Sec. 601. See appendix, Exhibit C.

Sections 1499 and 1502 of the Philippine Administrative Code, together with the enacting clause of the Code (Philippine Act, No. 2711, approved March 10, 1917). See appendix, Exhibit D.

## Statement.

The National City Bank of New York (hereinafter referred to as the "Bank") is a national banking association with its principal office and place of business in New York City. It operates branches in Manila and Cebu in the Philippine Islands, under

authority conferred by Section 25 of the Federal Reserve Act.

The Government of the Philippine Islands imposed, and the Bank paid, a tax on the net income of the business of the Bank in the Philippine Islands for the first half of the year 1931 (Record, pp. 109-110). There is no controversy with respect to the income tax.

The Government of the Philippine Islands, however, in addition to the income tax, imposed, and the Bank paid, under protest, a tax for the first half of the year 1931 amounting to 77,324 pesos and 11 centavos (Ps77,324.11) as deposit and capital taxes for the first half of the year 1931.

The Bank brought this action in the Court of First Instance of Manila, Philippine Islands, against Juan Posadas, Jr., Collector of Internal Revenue of the Philippine Islands, to recover the said Ps77,324.11 paid under protest.

The Court of First instance in Manila allowed a recovery of the tax on the deposits but not of the tax on the capital (Opinion, Record, pp. 132-137).

The Supreme Court of the Philippine Islands, one Judge dissenting, ordered a refund of the taxes both on the deposits and on the capital (Opinions, Record, pp. 142-161).

# POINTS.

## FIRST.

**The Philippine Islands are a dependency of the United States.**

The Autonomy Act applies to the Philippine Islands as ceded to the United States Government by the Treaty of Peace concluded between the United States and Spain on April 11, 1899 (48 U.S.C.A., Sec. 1001).

In an opinion rendered to the Secretary of War by Hon. Harlan F. Stone under date of April 30, 1924, the following appears (34 Opinions of Attorneys General, 291):

> "The Philippine Islands came under the sovereignty of the United States by a treaty with Spain, and, while they have not been incorporated into the United States as a part thereof, they are subject to its control as a dependency or possession, and they, therefore, constitute territory of the United States and having been so acquired they remain subject to such control until such time as Congress may determine in its discretion that the dependency has reached a condition where the islands should be admitted as a part of the United States or that this Government should terminate its occupation and surrender the jurisdiction of the United States."

In an opinion rendered to the Secretary of War by Hon. John G. Sargent under date of April 17, 1925 (34 Opinions of Attorneys General 465-6), the following statement was made:

> "The Philippine Islands, while not an organized territory of the United States, are,

nevertheless, an insular possession appurtenant to the United States. They constitute a territorial possession and may be dealt with as the Congress of the United States may deem fit and proper. (*Mormon Church* v. *United States, supra; DeLimo* v. *Bidwell,* 182 U. S. 1; *Downes* v. *Bidwell,* 182 U. S. 244, 342.)"

## SECOND.

**The National Bank Act and the Federal Reserve Act extend to the Philippine Islands.**

Section 25 of the Federal Reserve Act, as originally enacted *in 1913* (38 Stat. 251, 273) gave to national banking associations possessing capital and surplus of one million dollars or more the privilege of applying to the Federal Reserve Board for permission to establish branches "in foreign countries *or dependencies of the United States* for the furtherance of the foreign commerce of the United States and to act, if required to do so, as fiscal agents of the United States". Leave to establish the Philippine branches was given to the Bank by the Federal Reserve Board on January 23, 1930 (Record, pp. 42-3).

Section 5 of the Jones or Autonomy Act, relating to the Philippine Islands (48 U.S.C.A., Sec. 1003) provides:

> "The statutory laws of the United States *enacted subsequent to August 29, 1916,* shall not apply to the Philippine Islands except when they specifically so provide or it is so provided in this chapter."

It follows that the Federal Reserve Act authorized the Bank to open branches in the Philippine Islands for two reasons: (1) because it was enacted two years before the Autonomy Act; and (2) because it

"specifically so provides", that is, it authorized the opening of branches in the "dependencies" of the United States; and the Philippine Islands were then dependencies of the United States.

This precise question has very recently been passed upon by this Court in regard to Puerto Rico.

> *Domenech* v. *National City Bank,* 294 U. S. 199, 204.

In that case the question was presented as to the power of Puerto Rico to tax the Puerto Rican branch of this Bank. Mr. Justice Roberts said, in the course of his opinion (294 U. S., 204):

> "The system of national banks was intended to be co-extensive with the territorial limits of the United States, * * * The organization of a national bank in Puerto Rico is within the contemplation of the National Banking Act; but if there were doubt concerning the proposition, it finds support in legislation extending applicable laws of the United States to the Island."

In the same way 48 U.S.C.A., Sec. 1003, lends support to the extension of the National Bank Act to the Philippine Islands so far as the branches of the Bank are concerned.

As the Bank was expressly authorized to establish branches in dependencies of the United States, and as the Philippine Islands are a dependency of the United States, it follows that the laws defining the powers, duties, liabilities and privileges of national banks are extended to the Philippine Islands so far as such branches are concerned. It could not have been contemplated that these branches should operate in the Philippine Islands otherwise than in accord-

ance with the laws of the United States, under which the Bank was organized.

> "Every corporation necessarily carries its charter wherever it goes for that is the law of its existence."
>
> *Relfe* v. *Rundle,* 103 U. S., 222, 226;
> *Canada So. R. R. Co.* v. *Gebhard,* 109 U. S., 527, 537.

## THIRD.

**The Government of the Philippine Islands had no power to tax the deposits and capital of the Philippine branches of the Bank.**

R.S., Sec. 5219 (12 U.S.C.A., Sec. 548), as amended by the Act of March 25, 1926, Ch. 88, 44 Stat. 223, authorizes the States to impose the following taxes on national banks: (1) on the shares; (2) to include the dividends derived therefrom in the taxable income of the shareholder; (3) on the net income; or (4) upon certain conditions, according to or measured by the net income; and provides that "the imposition by any State of any one of the above four forms of taxation shall be in lieu of the others", with certain exceptions which are not involved here. Concededly, *no State* could tax a national bank on its income and, *in addition,* impose deposit taxes and capital taxes, as the Philippine Government has attempted to do.

Ever since the case of *McCulloch* v. *State of Maryland* (4 Wheat. 316, 426, 430, 436), it has been the law that the States may not tax banks incorporated under the Federal laws, except with the consent of Congress, since they are agencies of the Federal Government.

*Owensboro Nat. Bank* v. *Owensboro,* 173 U. S., 664, 668;
*Des Moines Nat. Bank* v. *Fairweather,* 263 U. S., 103, 106;
*First Nat. Bank* v. *Anderson,* 269 U. S., 341, 347;
*Iowa Des Moines Nat. Bank* v. *Bennett,* 284 U. S., 239, 244.

The petitioner's contention (Brief, p. 30) that R.S., Sec. 5219, does not extend to the Philippine Islands, defeats his entire argument.

The States *have no power* to tax national banks, unless that power is expressly conferred by Congress.

> "the respective States would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress."
>
> *Owensboro Nat. Bank* v. *Owensboro,* 173 U. S., 664, 668.

Such power is conferred on the States *only by R.S., Sec. 5219,* and that power is "co-extensive with the territorial limits of the United States".

*Talbott* v. *Silver Bow County,* 139 U. S., 438, 443;
*Domenech* v. *National City Bank,* 294 U. S., 199, 204.

The dependencies of the United States, in the absence of the clear and explicit consent of Congress, *have no power* to tax a national bank, which is "a Federal instrumentality" because "the dependency may not tax the sovereign".

*Domenech* v. *National City Bank,* 294 U. S., 199, 205.

Consequently, if as the petitioner contends, R.S., Sec. 5219, does not extend to the Philippine Islands, no consent has ever been given by Congress to the Philippine Government to tax national banks, since the grant "of a general power to tax should not be construed as a consent".

*Domenech* v. *National City Bank,* 294 U. S., 199, 205.

It follows that, if Section 5219 does not extend to the Philippines, the real property tax and the income tax, which are not questioned by the respondent, are also void.

For the purposes of this case, it is therefore entirely immaterial whether or not R.S., Sec. 5219, extends to the Philippines. As the Philippine Government has assessed and collected a tax on the income of the Bank, it has exhausted its taxing power, if any such power is conferred upon it by Congress under R.S., Sec. 5219. In any event, it has no power or authority to levy the deposit and capital taxes which are in question in this action.

The issue does not depend, as contended by the Petitioner, upon the question whether there is a Federal Statute *limiting* the general taxing power of the Philippine Government, but, as held in the *Domenech* case, upon whether the power to tax the Bank has been *granted* to the dependency clearly and explicitly by Act of Congress.

As the Philippine Government has assessed and collected a tax on the income of the Bank under Subdivision 3 of Revised Statutes, Section 5219, as amended, it has exhausted its taxing power if such a power is conferred upon it by Congress (except for the power to tax the real property of the Bank) and, therefore, it has no power or authority to levy,

in addition, the deposit and capital taxes which are in question in this action.

That the exemption from taxation applies to branches as well as to the main offices of national banks has been decided by this Court.

*McCulloch* v. *State of Maryland*, 4 Wheat., 316, 424-5;
*Domenech* v. *National City Bank*, 294 U. S., 199, 204.

In the *Domenech* case, this Court held:

> "Taxation of a bank's branch is taxation of the bank itself."

As every phase of the questions presented in this suit has very recently been passed upon by this Court, the petition should be denied.

The writ of certiorari was granted in the *Domenech* case only because an important question of Federal law was presented "which has not been but should be settled by this court" (294 U. S., 201).

In view of the *Domenech* decision, that reason for granting the writ does not exist in the present case.

## FOURTH.

***The petition for a writ of certiorari should be denied.***

Dated, Washington, July 23, 1935.

HARRY W. FORBES,
*Attorney for Respondent,*
55 Wall Street,
New York City.

CARL A. MEAD,
*Of Counsel.*

# APPENDIX.

## Exhibit A.

Section 5219 of the Revised Statutes, as amended by the Act of March 4, 1923, Ch. 267, 42 Stat. 1499, and March 25, 1926, Ch. 88, 44 Stat. 223 (12 U.S.C.A., Sec. 548):

"*Section 548. State taxation.* The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks; *Provided,* that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: *Provided, however,* That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

2. The shares of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. (As amended Mar. 25, 1926, c. 88, 44 Stat. 223.)"

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**Exhibit B.**

Sections 1 and 5 of the Act of August 29, 1916, Ch. 416, 39 Stat. 545, entitled "An Act to declare the purposes of the people of the United States as to the future political status of the people of the Philippine Islands and to provide a more autonomous government for those Islands" (48 U.S.C.A., Secs. 1001, 1003):

"*Section 1001. The Philippines; meaning of term.* The provisions of this chapter and the name 'the Philippines' as used herein shall apply to and include the Philippine Islands ceded to the United States Government by the treaty of peace concluded between the United States and Spain on the 11th day of April, 1899, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November, 1900 (Aug. 29, 1916, c. 416, Sec. 1, 39 Stat. 545)."

"*Section 1003. Application of statutory law of United States.* The statutory laws of the United States enacted subsequent to August 29, 1916, shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this chapter. (Aug. 29, 1916, c. 416, Sec. 5, 39 Stat. 547.)"

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## Exhibit C.

Section 25 of the Federal Reserve Act, as amended, 12 U.S.C.A. Sec. 601:

"*Section 601. Authorization; conditions and regulations.* Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

Second. To invest an amount not exceeding in the aggregate 10 per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.

Until January 1, 1921, any national banking association, without regard to the amount of its capital and surplus, may file application with the Federal Reserve Board for permission, upon such conditions and under such regulations as may be prescribed by said board, to invest an amount not exceeding in the aggregate 5 per centum of its paid-in capital and surplus in the stock of one or more corporations chartered or incorporated under the laws of the United States or of any State thereof and regardless of its location, principally engaged in such phases of international or foreign financial operations as may be necessary to facilitate the export of goods, wares, or merchandise from the United States or any of its dependencies or insular possessions to any foreign country; *Provided, however,* That in no event shall the total investments authorized by this section by any one national bank exceed 10 per centum of its capital and surplus.

Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking or financial operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on. (Dec. 23, 1913, c. 6, Sec. 25, 38 Stat. 273; Sept. 7, 1916, c. 461, 39 Stat. 755; Sept. 17, 1919, c. 60, Sec. 2, 41 Stat. 286.)"

## Exhibit D.

Sections 1499 and 1502 of the Philippine Administrative Code, together with the enacting clause of the Code (Philippine Act, No. 2711, approved March 10, 1917):

"For the purpose of adapting it to the Jones Law and the Reorganization Act, numbered two thousand six hundred and fifty-seven, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:

*Section 1. Title of Act.*—This Act shall be known as the Administrative Code.

*Section 1499. Tax on capital, deposits, and circulations of banks.*—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulations:

(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether payable on demand, or on some future day, for each month, one-eighteenth of one per centum.

(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

(d) 'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills or exchange, or promissory notes are received for discount or for sale.

'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security.

"*Section 1502. Computing resources of bank incorporated abroad.*—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the purposes of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank."